

**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE

BIG RIVER TELEPHONE COMPANY, LLC,

Appellant,

v.

SOUTHWESTERN BELL TELEPHONE COMPANY, d/b/a AT&T MISSOURI, and
MISSOURI PUBLIC SERVICE COMMISSION,

Respondents.

DOCKET NUMBER WD76420

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

DATE: June 3, 2014

APPEAL FROM

The Public Service Commission

JUDGES

Division One: Ellis, P.J., and Mitchell and Gabbert, JJ.

CONCURRING.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY MISSOURI COURT OF APPEALS, WESTERN DISTRICT

BIG RIVER TELEPHONE COMPANY,)
LLC,)

Appellant,)

v.)

SOUTHWESTERN BELL TELEPHONE)
COMPANY, d/b/a AT&T MISSOURI,)
and MISSOURI PUBLIC SERVICE)
COMMISSION,)

Respondents.)

OPINION FILED:
June 3, 2014

WD76420

Public Service Commission

Before Division One Judges: Joseph M. Ellis, Presiding Judge, and Karen King Mitchell and Anthony Rex Gabbert, Judges

Big River Telephone Company, LLC, appeals from a Report and Order issued by the Public Service Commission (PSC or the Commission), denying Big River's complaint against Southwestern Bell Telephone, L.P., d/b/a AT&T Missouri (ATT), and granting ATT's counter-complaint against Big River. The complaints involved a dispute over access charges billed to Big River by ATT: Big River claimed that the charges were improperly assessed on non-chargeable information or enhanced services; ATT claimed that the charges were based on Big River's provision of interconnected voice over internet protocol (I-VoIP) and were required by both statute and the parties' interconnection agreement (ICA). The PSC determined that the services at issue constituted I-VoIP and were subject to charges. Accordingly, the PSC determined that the amount billed by ATT was due and owing. We affirm.

AFFIRMED.

Division One holds:

- (1) In order to preserve a claim for review from a PSC Report and Order, a party generally must include that claim in a timely application for rehearing. There is one exception, however, and that is a claim that the PSC exceeded its jurisdiction.

- (2) The PSC has the authority to enforce terms of Interconnection Agreements entered into pursuant to the Telecommunications Act of 1996. A finding that billed amounts are due and owing is nothing more than enforcement of ICA terms; it does not constitute an award of damages.
- (3) The PSC’s finding of the amount due and owing to AT&T was supported by competent and substantial evidence.
- (4) The PSC’s determination that Big River’s service required a broadband connection was reasonable, given that broadband is generally defined as service faster than dial-up, and Big River did not provide services to its customers through dial-up connections. Thus, customers of Big River required a broadband connection to use Big River’s services.
- (5) The term “required” in this context does not mean “indispensable” or “necessary”; it can simply mean “useful” or “appropriate.”
- (6) Once the PSC determined that Big River provided I-VoIP—a service that is statutorily required to be subject to access charges—the PSC did not need to determine whether those same services were enhanced for purposes of the ICA.

Opinion by: Karen King Mitchell, Judge

June 3, 2014

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